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4 RENWICK GIBBS,

5 Plaintiff,

6 v.

7 CONTRA COSTA COUNTY, ET AL.,

8 Defendants.

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10 No. C 11-00403 MEJ

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12 **ORDER RE DEFENDANTS' MOTION**
TO DISMISS [Dkt. #22]

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19 **I. INTRODUCTION**

20 Pending before the Court is Defendants Contra Costa County and David G. Brown's Motion
21 to Dismiss Plaintiff Renwick Gibbs' Complaint pursuant to Federal Rule of Civil Procedure
22 12(b)(6). Dkt. No. 22. On April 13, 2011, Plaintiff filed a document which the Court construes as
23 his Opposition. Dkt. No. 29. Pursuant to Civil Local Rule 7-1(b), the Court finds that the Motion is
24 appropriate for determination without oral argument and therefore **VACATES** the hearing set for
25 May 26, 2011. After carefully considering the parties' arguments, the Court **GRANTS** Defendants'
Motion.

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28 **II. FACTUAL AND PROCEDURAL HISTORY**

29 **A. Overview of Plaintiff's Complaint**

30 On January 27, 2011, Plaintiff initiated this lawsuit by filing a Complaint against Defendants
31 Contra Costa County, Deputy District Attorney David G. Brown, William Veale, and Michael
32 Coleman. Dkt. No. 1. Subsequently, on February 23, 2011, Plaintiff filed 60 pages of exhibits to his
33 Complaint.

34 Plaintiff alleges that his constitutional rights were violated and requests that the Court review
35 a "3 year state and speedy trial rights violations" which he alleges caused him to be falsely
36 imprisoned, kidnapped, and resulted in the creation of false documents, fraud, and the imposition of

1 an illegal sentence. Compl. at 1-2. He requests that the Court review records from 1993 through
2 2002, and avers that the record reveals a “major violation” that resulted in his wrongful incarceration
3 for five years. *Id.* at 2. He also requests that the Court “fix the damages” that resulted from the
4 alleged violations. *Id.*

5 **B. Factual Background**

6 The following facts are taken from Plaintiff’s exhibits and Defendants’ Request for Judicial
7 Notice.

8 On March 4, 1999, Plaintiff was convicted in Contra County Superior Court after he pled
9 guilty to violations of Penal Code section 211-212.5(b) (robbery), Penal Code section 211-212.5(a)
10 (robbery of operator of a vehicle for hire), and Penal Code section 211-212.5(b)/664 (attempted
11 robbery). Dkt. No. 12 at 1-3. At that time, Plaintiff executed, signed, and submitted to the trial
12 court an Advisement of Rights, Waiver and Guilty/No Contest Plea Form, in which he waived
13 certain constitutional rights, including the rights to a trial by court or jury, to confront and cross-
14 examine witnesses, to present evidence, and right against self-incrimination. *Id.* at 5. The court
15 sentenced Plaintiff to a total fixed term of 11 years imprisonment, with credit for time served. *Id.* at
16 3-4.

17 On April 12, 1999, Plaintiff and his wife filed a government claim with Contra Costa
18 County, alleging that Plaintiff’s rights were violated because he was not brought to trial within three
19 years and his attorney did not move to dismiss on these grounds. Defendants’ Request for Judicial
20 Notice (“RJN”), Ex. A at 6-8, Dkt. No. 23. On May 4 and 5, 1999, Plaintiff filed additional claims
21 with the County, asserting the same claims. RJN, Exs. B, C.

22 On September 1, 1999, and December 1, 1999, the state trial court judge denied Plaintiff’s
23 Petitions for Writ of Habeas Corpus. RJN, Exs. D, H. On August 14, 2000, the California Court of
24 Appeal denied Plaintiff’s appeal of his conviction. RJN, Ex. I.

25 **III. LEGAL STANDARD**

26 Federal Rule of Civil Procedure 12(b)(6) provides that a defendant may move to dismiss a
27 claim for “failure to state a claim upon which relief can be granted.” A motion to dismiss under
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1 Rule 12(b)(6) “tests the legal sufficiency of a claim.” *Navarro v. Block*, 250 F.3d 729, 732 (9th Cir.
2 2001). In order to survive a motion to dismiss, a plaintiff must allege “enough facts to state a claim
3 to relief that is plausible on its face.” *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007). “A
4 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw
5 the reasonable inference that the defendant is liable for the misconduct alleged.” *Ashcroft v. Iqbal*,
6 — U.S. —, 129 S.Ct. 1937, 1949 (2009). “The plausibility standard is not akin to a ‘probability
7 requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*
8 (quoting *Twombly*, 550 U.S. at 557.) In considering a motion to dismiss, a court must accept all of
9 the plaintiff’s allegations as true and construe them in the light most favorable to the plaintiff. *Id.* at
10 550; *Erickson v. Pardus*, 551 U.S. 89, 93–94 (2007). The plaintiff’s complaint need not contain
11 detailed factual allegations, but it must contain more than a “formulaic recitation of the elements of a
12 cause of action.” *Twombly*, 550 U.S. at 555. “Threadbare recitals of the elements of a cause of
13 action, supported by mere conclusory statements, do not suffice.” *Iqbal*, 129 S.Ct. at 1949. In
14 reviewing a motion to dismiss, courts may also consider documents attached to the complaint.
15 *Parks School of Business, Inc. v. Symington*, 51 F.3d 1480, 1484 (9th Cir. 1995) (citation omitted).
16 Additionally, courts may consider a matter that is properly the subject of judicial notice, such as
17 matters of public record. *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th Cir. 2001). If the court
18 dismisses the complaint, it “should grant leave to amend even if no request to amend the pleading
19 was made, unless it determines that the pleading could not possibly be cured by the allegation of
20 other facts.” *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000).

21 IV. DISCUSSION

22 In their Motion, Defendants argue that Plaintiff’s Complaint is subject to dismissal because
23 his claims are untimely and are barred under federal case law. The Court will address each
24 argument in turn.

25 A. Timeliness of Plaintiff’s Claims

26 Defendant first contends that Plaintiff’s claims are time-barred. Mot. at 6-7. As Defendants
27 note, Plaintiff appears to be asserting a claim for violation of his right to a speedy trial. In actions
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1 under 42 U.S.C. § 1983, the applicable statute of limitations is the forum state's statute of limitations
2 for personal injury actions. *Wilson v. Garcia*, 471 U.S. 261, 266, 274–76 (1985); *Vaughan v.*
3 *Grijalva*, 927 F.2d 476, 478 (9th Cir. 1991). As Defendant correctly points out, during the time
4 period at issue in Plaintiff's Complaint, California's statute of limitations for personal injury actions
5 was one year. *See Maldonado v. Harris*, 370 F.3d 945, 954 (9th Cir. 2004). Under California law,
6 the statute of limitations is tolled during incarceration for a maximum of two years. Cal. Code. Civ.
7 Proc. §§ 352.1(a).

8 With respect to when Plaintiff's claim accrued, under federal law, a claim accrues at the
9 point when the plaintiff knows or has reason to know of the injury that forms the basis of his claim.
10 *See TwoRivers v. Lewis*, 174 F.3d 987, 991 (9th Cir. 1999). In his Opposition, Plaintiff argues that
11 he has no knowledge of the alleged violations until December 2010 because of a mental illness.
12 Dkt. #18 at 1-2. However, Plaintiff overlooks that he filed claims asserting the same violations in
13 1999. In fact, the trial court judge denied Plaintiff's habeas petition wherein he asserted violation of
14 his right to speedy trial. *See RJN, Ex. D.* Thus, Plaintiff was aware of the violations at that point in
15 time. Consequently, his § 1983 claim arose no later than April 19, 1999.

16 Accordingly, applying the one-year statute of limitations and allowing two years of tolling,
17 Plaintiff was required to file any § 1983 claims asserting constitutional violations associated with his
18 right to trial no later than April 19, 2002. His claims asserted in this lawsuit are therefore untimely
19 and subject to dismissal.

20 **B. Dismissal Under *Heck v. Humphrey***

21 Alternatively, citing *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994), Defendants contend
22 that Plaintiff's claims seeking damages for constitutional violations fail because the recovery would
23 render his conviction and sentence invalid. In *Heck* the Supreme Court held:

24 [I]n order to recover damages for allegedly unconstitutional conviction or
25 imprisonment, or for other harm caused by actions whose unlawfulness would render
26 a conviction or sentence invalid, a § 1983 plaintiff must prove that the conviction or
27 sentence has been reversed on direct appeal, expunged by executive order, declared
invalid by a state tribunal authorized to make such determination, or called into
question by a federal court's issuance of a writ of habeas corpus, 28 U.S.C. § 2254. A
28 claim for damages bearing that relationship to a conviction or sentence that has not
been so invalidated is not cognizable under § 1983. Thus, when a state prisoner seeks

1 damages in a § 1983 suit, the district court must consider whether a judgment in favor
2 of the plaintiff would necessarily imply the invalidity of his conviction or sentence; if
3 it would, the complaint must be dismissed unless the plaintiff can demonstrate that
the conviction or sentence has already been invalidated.

4 *Id.* at 487.

5 Defendants argue that because Plaintiff's claim of an improper conviction and sentence
6 based on violation of his speedy trial rights "necessarily implies" the invalidity of his conviction,
7 Plaintiff's claims are subject to dismissal unless he can establish that his conviction was reversed,
8 expunged, or invalidated. Because Plaintiff's appeal and habeas petitions have been denied and
9 Plaintiff has not alleged any facts or submitted any evidence indicating that his conviction and
10 sentence have been reversed or invalidated, Defendants assert that *Heck* requires dismissal of
11 Plaintiff's claims. The Court agrees with Defendants. Accordingly, dismissal of Plaintiff's § 1983
12 claims is appropriate for this reason as well.

13 **V. CONCLUSION**

14 For the reasons set forth above, the Court **GRANTS** Defendants' Motion to Dismiss
15 Plaintiff's Complaint (Dkt. #22). Because there are no allegations that Plaintiff could assert to
16 change the Court's rulings, any amendment to Plaintiff's Complaint would be futile. Dismissal is
17 therefore **WITH PREJUDICE**.

18 **IT IS SO ORDERED.**

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20 Dated: May 18, 2011

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22 Maria-Elena James
23 Chief United States Magistrate Judge
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